Case No.

JANUARY 23, 2008

MICHAEL W. DOBBINS

CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

LABORERS' PENSION FUND and LABORERS' WELFARE FUND OF THE HEALTH AND WELFARE DEPARTMENT OF THE CONSTRUCTION AND GENERAL LABORERS' DISTRICT COUNCIL OF CHICAGO AND VICINITY, and JAMES S. JORGENSEN, Administrator of the Funds,

08 C 504

Plaintiffs,

JUDGE DER-YEGHIAYAN MAGISTRATE JUDGE COX

PRECISE BUILDING CORP.,

v.

Defendant.

COMPLAINT

Plaintiffs Laborers' Pension Fund and Laborers' Welfare Fund of the Health and Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity (the "Funds"), and plaintiff James S. Jorgensen ("Jorgensen"), Administrator of the Funds, by their undersigned attorneys, and for their Complaint against Defendant Precise Building Corp., as follows:

COUNT I

(Failure To Pay Employee Benefit Contributions)

- 1. Jurisdiction is based on Sections 502(e)(1) and (2) of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §1132(e)(1) and (2); Section 301(a) of the Labor Management Relations Act ("LMRA") of 1947 as amended, 29 U.S.C. §185(a); and 28 U.S.C. §1331.
- 2. Venue is proper pursuant to Section 502(e)(2) of ERISA, 29 U.S.C. §1132(e)(2), and 28 U.S.C. §1391(a) and (b).
- 3. The Funds are multiemployer benefit plans within the meaning of Sections 3(3) and 3(37) of ERISA. 29 U.S.C. §1002(3) and 37(A). The Funds have offices, conduct business and administer the plans within this District. Jorgensen is the Administrator of the Funds, and has been duly authorized by the Funds' Trustees to act on behalf of the Funds in the collection of employer contributions owed to the Funds and to the Construction and General Laborers' District Council of

Chicago and Vicinity Training Fund, and with respect to the collection by the Funds of amounts which have been or are required to be withheld from the wages of employees in payment of Union dues for transmittal to the Construction and General Laborers' District Council of Chicago (the "Union"). With respect to such matters, Jorgensen is a fiduciary of the Funds within the meaning of Section 3(21)(A) of ERISA, 29 U.S.C. § 1002(21)(A).

- 4. Defendant Precise Building Corp.(hereinafter "The Company"), is an Illinois corporation in good standing. The Company does business within this District and is an Employer within the meaning of Section 3(5) of ERISA, 29 U.S.C. §1002(5), and Section 301(a) of LMRA, 29 U.S.C. §185(a).
- 5. The Union is a labor organization within the meaning of 29 U.S.C. §185(a). The Union and the Company are parties to a collective bargaining agreement ("Agreement"). (A copy of the "short form" Agreement entered into between the Union and the Company, which Agreement adopts and incorporates a Master Agreement between the Union and various employer associations, and also binds the Company to the Funds' respective Agreements and Declarations of Trust, is attached hereto as Exhibit A.)
- 6. The Funds have been duly authorized by the Construction and General Laborers' District Council of Chicago and Vicinity Training Fund (the "Training Fund"), the Midwest Construction Industry Advancement Fund ("MCIAF"), the Chicagoland Construction Safety Council (the "Safety Fund"), the Laborers' Employers' Cooperation & Education Trust ("LECET"), [the Contractors' Association of Will and Grundy Counties (the "Will County Fund"), the Concrete Contractors' Association of Greater Chicago ("CCA"), and the CDCNI/CAWCC Contractors' Industry Advancement Fund (the "Wall & Ceiling Fund"), to act as an agent in the collection of contributions due to those funds.
- 7. The Agreement obligates the Company to make contributions on behalf of its employees covered by the Agreement for pension benefits, health and welfare benefits, for the training fund and to submit monthly remittance reports in which the Company, inter alia, identifies the employees covered under the Agreement and the amount of contributions to the Funds remitted

on behalf of each covered employee.

- 8. The Agreement further obligates the Company to procure, carry and maintain a surety bond to guarantee payment of wages, Pension and Welfare contributions for the duration of the Agreement.
 - 9. Notwithstanding the obligations imposed by the Agreement, the Company has:
- (a) failed to report and pay contributions owed to plaintiff Laborers' Pension Fund for the period November 1, 2003 through June 30, 2007, and September 2007 to the present, as reflected in reports by the Funds' auditors (Exhibit B) thereby depriving the Laborers' Pension Fund of contributions, income and information needed to administer the Fund and jeopardizing the pension benefits of the participants and beneficiaries;
- (b) failed to report and pay contributions owed to plaintiff for the period November 1, 2003 through June 30, 2007, and September 2007 to the present, as reflected in reports by the Funds' auditors (Exhibit B) thereby depriving the Welfare Fund of the Health and Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity of contributions, income and information needed to administer the Fund and jeopardizing the health and welfare benefits of the participants and beneficiaries; and
- (c) failed to report and pay contributions owed to plaintiff for the period November 1, 2003 through June 30, 2007, and September 2007 to the present, as reflected in reports by the Funds' auditors (Exhibit B) thereby depriving the Laborers' Training Fund of contributions, income and information needed to administer the Fund and jeopardizing the health and welfare benefits of the participants and beneficiaries;
- (d) failed to maintain a surety bond to guarantee the payment of wages, Pension and Welfare contributions.
- 10. Despite demand duly made, the Company has not paid the required contributions or other sums due.
- 11. All conditions precedent to requiring contributions and reports to the Funds have been met.
- 12. The Company's actions in failing to make timely reports and contributions violate Section 515 of ERISA, 29 U.S.C. §1145, and Section 301 of the LMRA. 29 U.S.C. §185.

13. Pursuant to Section 502(g)(2) of ERISA, 29 U.S.C. §1132(g)(2), and the terms of the Funds' Trust Agreements, the Company is liable to the Funds for unpaid contributions, as well as interest and liquidated damages on the unpaid contributions, reasonable attorneys' fees and costs, and such other legal and equitable relief as the Court deems appropriate.

WHEREFORE, Plaintiff respectfully requests this Court enter a judgment against Defendant Precise Building Corp., for the amounts of contributions owed to date together with all accrued delinquencies after suit, interest, liquidated damages, attorneys' fees and costs, directing the Company to obtain and maintain a surety bond to guarantee payment of wages, Pension and Welfare contributions as required by the Agreement, and an order directing Defendant to timely submit reports and upon demand by Plaintiffs submit to an audit, and any other legal and equitable relief as the Court deems appropriate.

COUNT II

(Failure To Pay Union Dues)

- 14 Plaintiff realleges paragraphs 1 through 8 of Count I.
- 15. Pursuant to the Agreement, the Funds have been duly designated to serve as collection agents for the Union and that the Funds have been given the authority to collect from employers union dues which should have been and/or have been deducted from the wages of covered employees.
- 16. Notwithstanding the obligations imposed by the Agreement, the Company has failed to withhold and/or to report to and forward the union dues that were deducted or should have been deducted from the wages of employees for the period from November 1, 2003 through June 30, 2007, thereby depriving the Union of income.
- 17. Pursuant to the Agreement, the Company is liable to the Fund for the unpaid union dues, as well as reasonable attorneys' fees, as the Union's collection agent, and costs, and such other legal and equitable relief as the Court deems appropriate.
- 18. The Company's actions have violated and are violating Section 301(a) of the LMRA, 29 U.S.C. § 185(a).

WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment against Defendant, Precise Building Corp., for the amount of the union dues owed to date together with all

attorneys' fees and costs, and any other legal and equitable relief as the Court deems appropriate.

Wesley G. Kennedy Karen I. Engelhardt N. Elizabeth Reynolds ALLISON, SLUTSKY & KENNEDY, P.C. 230 W. Monroe Street Chicago, Illinois 60606 (312) 364-9400

January 16, 2008

MEMORANDUM OF UNDERSTANDING

1.3641

- 1. The Employer hereby recognizes the Union as the sole and exclusive collective bargaining agent for all laborers employed by the Employer for the purpose of establishing rates of pay, wages, hours and employment and other terms and conditions of employment for such employees.
- 2. The current Collective Bargaining Agreements between the BUILDERS' ASSOCIATION OF CHICAGO and the UNION; the SEWER, TUNNEL AND SUB-WAY CONTRACTORS OF CHICAGO and VICINITY, also known as the UNDER-GROUND CONTRACTORS ASSOCIATION and the UNION: MASON CONTRACTORS ASSOCIATION OF COOK COUNTY and the UNION; STREET PAVING and GROUND SEPARATION CONTRACTORS including ILLINOIS ROAD BUILDERS' ASSOCIATION and the UNION; CONCRETE CONTRACTORS ASSOCIATION OF GREATER CHICAGO and the UNION; and EMPLOYING FLASTERERS' ASSO-CIATION OF CHICAGO and the UNION; shall be, and they hereby are incorporated herein with the same force and effect as if herein set forth in full, insofar as rates of pay, wages, hours of simployment and other terms and conditions of employment are involved for all such employees who are employed by the Employer. The Employer agrees to be bound by all the terms and conditions of the aforesaid Collective Bargaining Agreements between the said BUILDERS: ASSOCIATION OF CHICAGO and the UNION; the SEWER, TUNNEL and SUBWAY CONTRACTORS OF CHICAGO and VICINITY, also known as the UNDERGROWND CONTRACTORS' ASSOCIATION and the UNION; the MASON CONTRACTORS' ASSOCIATION OF COOK COUNTY and the UNION; the STREET PAVING and GROUND SEPARATION CONTRACTORS including, ILLINOIS ROAD BUILDERS! ASSOCIATION and the UNION; CONCRETE CONTRACTORS' ASSOCIATION OF GREATER CHICAGO and the UNION; and the EMPLOYING PLASTERERS' ASSOCIATION OF CHICAGO and the UNION.
- 3. The Employer agrees to pay the amounts which the (it) is bound to pay under said Collective Bargaining Agreements to the HEALTH and WELFARE DEPARTMENT OF CONSTRUCTION and GENERAL LABSORERS' DISTRICT COUNCIL OF CHICAGO and VICINITY, to the LABORERS' PENSION FUND, and to the LABORERS' HOLIDAY OR VACATION FUND, and to become bound by and be considered a party to the Agreements and the Declaration of Trust creating said Trust Funds as if (he) (it) has signed the original copies of the trust instruments and the smendments thereto. The Employer ratifies and confirms the appointment of the Employer Trustees, who shall together with their Successor Trustees, designated in the manner provided in said Agreements and Declaration of Truste, and jointly with and equal number of Trustees appointed by the Union, carry out the terms and conditions of the trust instruments.

ACCEPTED:
Trustees of Health & Welfare Department of Construction & General
Laborers! District Council of Chicago
end Vicinity

Employer

BY: Lamed Many Construction & General
Union

BY: Lamed Many Construction & General

Trustees of Laborers' Pension Fund

BY: Lamed Many Construction Fund

BY: Lamed Many Const

RICHARD J. WOLF AND COMPANY, INC.

Post Office Box 591
Palos Park, Illinois 60464
(708) 923-0909
Fax (708) 923-0910

November 7, 2007

® 433

Board of Trustees of the Various Fringe Benefit Funds of the Laborers Pension & Welfare Funds

RE: Precise Building Corporation (13641)

We have performed a fringe benefit contribution compliance audit of Precise Building Corporation, for the period from November 1, 2003 through June 30, 2007. The audit encompassed the comparison of individual earnings records to certain payroll tax and fund reports and a review of the general disbursement records.

The comparison and review indicate that the employer has not complied with its fringe benefit contribution requirements and owes the following amounts:

FUND	AMOUNT
WELFARE	\$ 5,765.69
PENSION	3,793.68
TRAINING	157.83
LECET	43.60
CISCO	4.12
MCIAF	28.86
LMCC	104.61
CAICA	36.76
DUES	538.99
Sub Total	\$10,474.14
Plus previous penalties incurred to Laborers' District Council Funds	\$ 58.84
TOTAL	\$10,532.98

In addition, the employer could not provide proof of a current wage and fringe benefit bond.

RICHARD J. WOLF AND COMPANY, INC.

YEAR: 6/03 to 5/04

Rates: WELFARE PENSION TRAINING LECET

6/1/03 4.17 3.38 0.17 0.05

CISCO MCIAF LMCC DUES

0.01 0.07 0.12 1.75%

LABORERS' DISTRICT COUNCIL OF CHICAGO - BAC ASSOCIATION

PRECISE BUILDING CORPORTION - #13641

ADDITIONAL HOURS and/or WORK DUES 6/03 - 5/04

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Filed 01/23/2008

Case 1:08-cv-00504

LABORERS' DISTRICT COUNCIL OF CHICAGO - BAC ASSOCIATION PRECISE BUILDING CORPORTION - #13641

YEAR: 6/04 to 5/05

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LECET			3.91	\$ 23.50		69	69	()	69	(4)	69	69	(5	6A ·	41 35
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Rates:	6/1/04	ťo	5/31/05
WELFARE	6.31	CISCO	0.01
PENSION	3.44	MCIAF	0.07
TRAINING	0,17	LMCC	0.12
LECET	0.05	DUES	1 75%

LABORERS' DISTRICT COUNCIL OF CHICAGO - BAC ASSOCIATION PRECISE BUILDING CORPORTION - #13641

RICHARD J. WOLF AND COMPANY, INC.

SUMMARY REPORT TOTAL

ı≥	DDITIONAL	CN.	REPORTED		TOTAL
↔	704.73	↔	1,534.91	€	2,239.64
↔	571.22	↔	836.78	↔	1,408.00
↔	28.73	↔	41.35	↔	70.08
↔	8.45	↔	12.16	↔	20.61
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LABORERS' DISTRICT COUNCIL OF CHICAGO - BAC ASSOCIATION

PRECISE BUILDING CORPORTION - #13641

RICHARD J. WOLF AND COMPANY, INC.

** GRAND TOTAL **

TOTAL	DUES	LMCC	MCIAF	CISCO	LECET	TRAINING	PENSION	WELFARE
↔	₩	↔	€	↔	↔	↔	↔	↔
4.032.79	212.01	49.47	\$ 28.86	4.12	20.61	70.08	1,408.00	2,239.64

LABORERS' DISTRICT COUNCIL OF CHICAGO - CAICA ASSOCIATION	
CAICA ASSOCIATION	

PRECISE BUILDING CORPORTION - #13641

UNREPORTED HOURS and/or WORK DUES 6/06 to 5/07

YEAR: 6/06 to 5/07

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\$ 3,546.16	\$ 149.90	\$ 21.36	\$ 32.04	\$ 13.36	\$ 45.40	\$ 1,292.28	\$ 1.991.82	Total	\$ 8,565.82	267.00		\$ 8,565,82	267.00	1000	Total

LABORERS' DISTRICT COUNCIL OF CHICAGO - CAICA ASSOCIATION

PRECISE BUILDING CORPORTION - #13641

UNREPORTED HOURS and/or WORK DUES 6/07 to 5/08

YEAR: 6/07 to 5/08

IOIAL	PENSION TRAINING LECET LMCC CAICA CAICA DUES	Amount Due To Funds:	TOTAL HOURS TOTAL GROSS \$	620-35-5867	S. S. #
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Rates:	6/1/07	to	5/31/08	
WELFARE	7.97	LMCC	0.12	
PENSION	5.68	CAICA	0.08	
TRAINING	0.22	DUES	2.75%	
LECET	0.05			

LABORERS' DISTRICT COUNCIL OF CHICAGO - CAICA ASSOCIATION

PRECISE BUILDING CORPORTION - #13641

RICHARD J. WOLF AND COMPANY, INC.

SUMMARY REPORT TOTAL

	AD	DITIONAL	S	REPORTED		TOTAL
WELFARE	မှာ	1	↔	3,526.05	↔	3,526.05
PENSION	€9	1	↔	2,385.68	↔	2,385.68
TRAINING	↔	. 3	↔	87.75	↔	87.75
LECET	↔	ı	↔	22.99	()	22.99
LMCC	cs	ı	↔ .	55.14	↔	55.14
CAICA	↔	r	↔	36.76	⇔	36.76
DUES	₩	1	↔	326.98	()	326.98
TOTAL	↔		v	\$ 6,441.35	\$	6,441.35

LABORERS' DISTRICT COUNCIL OF CHICAGO - CAICA ASSOCIATION

PRECISE BUILDING CORPORTION - #13641

RICHARD J. WOLF AND COMPANY, INC.

** GRAND TOTAL **

TOTAL	DUES	CAICA	LMCC	LECET	TRAINING	PENSION	WELFARE
&	↔	↔	€	€9	↔	↔	↔
6,441.35	326.98	36.76	55.14	22.99	87.75	2,385.68	3,526.05

LABORERS' DISTRICT COUNCIL OF CHICAGO - GRAND TOTALS PRECISE BUILDING CORPORTION - #13641

RICHARD J. WOLF AND COMPANY, INC.

SUMMARY REPORT TOTAL

	AS	BAC SOCIATION	ASS	SOCIATION		TOTAL
WELFARE	\$	\$ 2,239.64	€9	\$ 3,526.05	क	5,765.69
PENSION	↔	1,408.00	↔	2,385.68	↔	3,793.68
TRAINING	↔	70.08	₩	87.75	↔	157.83
LECET	↔	20.61	↔	22.99	↔	43.60
CISCO	↔	4.12	↔	ı	↔	4.12
MCIAF	↔	28.86	↔	1	↔	28.86
LMCC	↔	49.47	€	55.14	မှ	104.61
CAICA	↔	1	G	36.76	↔	36.76
DUES	↔	212.01	€9	326.98	↔	538.99
TOTAL	↔	4,032.79	မှ	6,441.35	↔	10,474.14

LABORERS' DISTRICT COUNCIL OF CHICAGO - GRAND TOTALS PRECISE BUILDING CORPORTION - #13641

RICHARD J. WOLF AND COMPANY, INC.

** GRAND TOTAL **

TOTAL	DUES	CAICA	LMCC	MCIAF	CISCO	LECET	TRAINING	PENSION	WELFARE
ઝ	₩	↔	↔	↔	↔	↔	↔	↔	↔
10,474.14	538.99	36.76	_	28.86			157.83	3,793.68	5,765.69